determination of the tenancy it was open to the landlord to take proceedings for ejectment on the footing of paragraph (j). He did so take proceedings after a few months on the 16th March, 1953. Mr. Tan Cheng Hock for the tenant conceded that, if action had been taken immediately on the 1st December, 1952, the tenant would have been unable to resist an order for ejectment; but he says that the delay until the 16th March, 1935 gives him protection. I cannot see that this argument can be valid. It is neccessary to consider what the situation was when the contractual tenancy ended. If then the tenant was entitled to protection against deprivation of possession, he became by holding over a statutory tenant; but, if he was not protected against deprivation of possession, he could not become a statutory tenant and never has become one. I think the delay cannot possibly affect the matter and consider that, just as the tenant could have been ejected by action on the 1st December, 1952, he can be ejected by action taken now. The decision in the Singapore case of *Ida Fernandez v. M. Murugiah*[1] appears to support this view.

The reference made to me did not state in terms that the payments under paragraph (j) had continued right up to the determination of the contractual tenancy, and I wish to make it clear that this decision does not deal with the legal consequences which would have ensued, if the payments had been discontinued at any time prior to the expiration of the contractual tenancy. Various considerations might apply and questions of "reasonable time" might arise, with which I cannot now deal. Where, however, as here, the payments contrary to paragraph (j) continued to the very end of the contractual tenancy, I am of opinion that it is possible to obtain ejectment and that the present tense of the word "receives" in paragraph (j) does not lead to any other conclusion. In answering this reference accordingly I therefore decide in favour of the landlord.

The tenant must pay the landlord's costs which, by consent, are assessed at the sum of $100.

Order accordingly.

Solicitors: *Presgrave & Matthews; Huck Aik & Cheng Hock.*

WOON GUAT CHIN (f) v. LIM SIAN POON.

[A C. J. (Thomson J.) March 23, 1954]

[Ipoh — Civil Appeal No. 4 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Ejectment — Tenant receiving excessive rent — Court has no power to go behind decision of the Rent Assessment Board.

In this case the rent paid by the tenant (appellant) to the landlord (respondent) was $25 a month and the monthly rents received by him from his sub-tenants up till some date in September 1950 was $50. The landlord obtained permission in writing of the Rent Assessment Board to apply for ejectment. In the proceedings in the Sessions Court, the landlord asked for and he got ejectment. Against this ejectment the tenant appealed. Counsel for the appellant contended that the permission of the Rent Assessment Board should be disregarded because at the time the landlord applied for it to the Board he had not determined the contractual tenancy. He further argued that sums of money spent by the tenant on repairs should be deemed by reason of s. 3(3) of the Control of Rent Ordinance, 1948 to be increases in the rent paid to the landlord.

Held: (1) the Court has no power to go behind a decision of the Rent Assessment Board. If the Rent Assessment Board acts without jurisdiction or if it violates the principles of natural justice, actions can be called in question by way of *certiorari;* (2) para. (j) of s. 13(1) of the Control of Rent Ordinance, 1948 is contravened if at any time, after the commencement of the Control of Rent Ordinance, the tenant has received rents amounting to more than 75% of the rent paid by him to the landlord.

Cases referred to:—

(1) *M. Pr. Kannappa Chettiar v. L. R. M. Letchumanan Chettiar* (1952) M.L.J. 188.

(2) *Wagner & Anor. v. Tan Eng Yeow* (1947) M.L.J. 33.

(3) *Che Yusof bin Ismail v. Tan Kay Chua* (1952) M.L.J. 133.

APPEAL from Sessions Court.

Ng Git Geow for the appellant.

S. P. Seenivasagam for the respondent.

Thomson J. (delivering oral judgment): — This is an appeal from the Sessions Court at Taiping. The plaintiff in these proceedings is the owner and the defendant is the tenant of premises at No. 34 Market Road, Taiping. In the proceedings in the Sessions Court, the plaintiff asked for and he got ejectment. Against that the defendant in these proceedings has now appealed.

I propose to deal with the matter in this way. In proceedings of this nature, the first question the Court has to determine is whether or not the tenancy has been lawfully determined by notice or otherwise. This tenancy was a monthly tenancy. It is admitted that notice to quit was good and it is admitted that the tenant stayed on after the expiration of that notice. Apart, then, from the provision of the Control of Rent Ordinance, the landlord was entitled to ejectment.

The next question the Court has to consider was whether the tenant was entitled to the protection of the Control of Rent Ordinance. There was no question

of rent being in arrear and therefore the Court had to be satisfied of two things before it can say the tenant was not entitled to the protection of the Ordinance.

The first of these was that the landlord had obtained permission in writing of the Rent Assessment Board to apply for ejectment, and the second was that the case fell within one or other of the provisions of section 13(1) of the Ordinance.

As regards the first of these points the landlord did have the permission in writing of the Rent Assessment Board to apply for ejectment. It has been said that that permission should be disregarded because at the time the landlord applied for it to the Board he had not determined the contractual tenancy. I disagree and I do so for two reasons.

The first is that I can nowhere find any declaration by the Legislature as to the principles which should govern the Rent Assessment Board in connection with such application. Obviously, the Board is not going to give permission in a case where a subsequent application to the Court is unlikely to be successful. That, however, is merely a consideration of prudence and it seems to me that provided the ordinary principles of natural justice are observed, that is to say, both sides being given a fair hearing and so forth, the Rent Assessment Board has a free-hand.

The second reason is that (whether I be right or wrong as to the first reason) the Sessions Court has no power, nor indeed has this Court, to go behind a decision of the Rent Assessment Board. If a Rent Assessment Board acts without jurisdiction or if it violates the principles of natural justice, no doubt its actions can be called in question, but they can only be called in question by way of *certiorari*. Apart from that as I have already held in this Court, and rightly held[1], there is no right of appeal from a Rent Assessment Board and to say, as I have been invited to say, that the Sessions Court not only can but should go behind a decision of a Rent Board on the ground that it is wrong in law would, in effect, be conferring such a right of appeal, which, as I have already held, the Legislature has not seen fit to give. So much then for the question of the permission of the Rent Board.

The only question that then remained for the Sessions Court to decide was wheher the case fell within one of the paragraphs of section 13(1), the particular paragraph in question being paragraph (j) which provides that where the tenant having sub-let the premises or part thereof receives in respect of such letting rents exclusive of payments by the tenant for Municipal and Town Board services which exceed in the aggregate 75 per cent of the rent paid by the tenant.

In the present case the rent paid by the tenant was $25 a month and the monthly rents received by him from the sub-tenants up till some date (which has not been exactly proved) in September, 1953, was $50.

Before going further with the question of the figures, I am going to remind myself of what was said by Sir Harold Willan in the case of *Wagner & Anor. v. Tan Eng Yeow*[2]. In that case His Lordship was concerned with the Enactment which preceded the present Control of Rent Ordinance, and he said :—

"Since the provisions of the Rent and Charged Land (Restriction) Enactment, 1940, interfere with private rights, they must be construed strictly, and not in such a way that tenants would be able to default continually in payment of rent when due, and only pay such rent when ejectment proceedings had been commenced by the issue of a notice to quit."

Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 per cent of the rent paid by him to the landlord.

Counsel for the appellant has made strenous attempts to reduce what was actually paid by the sub-tenants beneath that figure of 75 per cent.

His main argument was that sums of money spent by the tenant on repairs should be deemed by reason of sub-section 3 of section 3 to be increases in the rent paid to the landlord. I disagree for two reasons. In the first place it seems to me as a matter of construction that sub-section 3 is to be read (and is only to be read) as part of section 3 as a whole, and the rent envisaged there is the rent of the premises which cannot be increased without the order of the Board. And yet again, even if I be wrong on that point the sub-section only applies where there has been a transfer to a tenant of a burden or liability previously borne by the landlord. I do not think it can be said when a tenant voluntarily does repairs that any sort of liability or burden has been transferred to him.

Even if I be entirely wrong, even if the repairs should be taken into consideration, it still seems to me as a matter of calculation that the amount received was more than 75 per cent of the rent paid. I should add that in making that observation I am assuming that as the tenant herself was living in the premises only a portion of the charges for water, conservency and electric light should be hypothecated to the sub-tenants. In that connection I would quote what I said about two years ago in the case of *Che Yusof bin Ismail v. Tay Kay Chua*[3] :—

". . . . only so much of these payments by the tenant as was in respect of the portion of the premises sub-let by him to the sub-tenants is admissible as a deduction for the purpose of determining the percentage of the rent paid by the tenant which was constituted by the

rents paid by the sub-tenants. I think that is crystal clear from the wording of the section itself. It says "where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents" then follow the words which as if to emphasize that they qualify the word 'rent' are contained in brackets "(exclusive of any payment by the tenant for .... services)". The words "in respect of such sub-letting" if they have any meaning at all clearly govern everything that follows them, that is to say, the word rent as qualified by the words in brackets."

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Conaghan, Wreford & Thornton; S. Seenivasagam & Sons.*

PUBLIC PROSECUTOR v. CHANG WAN SENG.

[A. Cr. J. (Wilson J.) August 23, 1954]

[K. L. — Criminal Appeal No. 59 of 1954]

Penal Code, s. 304A — Negligence — Particulars of negligence — Accused not entitled to such particulars.

A request for particulars of negligence under s. 304A of the Penal Code is tantamount to a request for particulars of the evidence which the prosecution proposed to call and therefore an accused is not entitled to such particulars. When a person is charged with murder it is not necessary to specify in the charge the poison or weapon used. Where an accused is involved in a collision he must be in a position to instruct his Counsel as to his version of how the collision took place and that is all that Counsel needs in order to conduct the defence.

CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

Ernest Jeff for the respondent.

Cur. Adv. Vult.

Wilson J. : — In this case the accused was charged with the following offence:—

"That you on 5.3.54 at about 5.20 p.m. at Birch Road/Shaw Road, Kuala Lumpur, caused the death of one, Yap Yong How, by doing a negligent act not amounting to culpable homicide, to wit by driving motor lorry N. 3094 negligently and thereby collided head-on into motor car BB. 7811, and that you have thereby committed an offence punishable under s. 304A Cap. 45 of the Penal Code."

When the case was called, Counsel for the accused complained that, although he had asked for particulars of negligence these had not been supplied. The Court thereupon ordered particulars of negligence to be served upon the accused or his Counsel within two weeks. In his grounds for order, the learned President states that as the accused was charged with doing a negligent act resulting in death, the act or acts complained of should be disclosed in the charge.

In my opinion, a request for particulars of negligence was tantamount to a request for particulars of the evidence which the prosecution proposed to call, and I do not think that the accused was entitled to such particulars. In my opinion, the charge contained such particulars as are required by section 153 of the Criminal Procedure Code and I do not think section 154 of the Criminal Procedure Code has any application in this case. When a person is charged with murder it is not usual, and certainly not necessary, to specify in the charge the poison or weapon used. I cannot say that the accused was in any way prejudiced by a failure to supply him with the particulars of the evidence on which the prosecution relied. If he was not involved in the collision as alleged, then his defence is simple. If he was involved in the collision he must be in a position to instruct his Counsel as to his version of how the collision took place and that is all that Counsel needs in order to conduct the defence.

The appeal is allowed and the case remitted to the President of the Sessions Court for trial.

Appeal allowed.

HOOI MOON v. AR. K. SUPPIAH CHETTIAR.

[A. C. J. (Spenser Wilkinson J.) June 9, 1954]

[Penang — Civil Appeal No. 1 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Claim for possession — Tenant receiving excessive rent — Relevant time of tenant so receiving.

The landlord in this case claimed possession on the ground that the tenant "receives" rent in excess of 75% of the rent paid by him. Before ejectment proceedings were started but subsequent to a notice to quit the tenant had reduced the rent to within the legal maximum. It was argued that the words "receives . . . rent" in s. 13(1)(j) related to the time when ejectment proceedings were started.

Held: if at the date when the contractual tenancy terminated the tenant is receiving rent in excess 75% of the main rent, the conditions of s. 13(1)(j) are fulfilled and the landlord is entitled to possession.

Cases referred to:—

(1) *K. S. Mohamed Ismail v. Choo Pin, ante* p. 183.

(2) *Woon Guat Chin v. Lim Sian Poon, ante* p. 184.

CIVIL APPEAL from Sessions Court.

Ong Huck Lim for the appellant.

G. H. Conaghan for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson J. : — This was an appeal against the decision of the President of the Sessions Court giving possession of certain premises occupied by the defendant to the plaintiff.

The ground upon which the order for possession was made was that the defendant had received from his sub-tenant rent in excess of seventy-five per cent. of